

REMARKS

The present amendment is in response to the Office Action dated July 27, 2004, where the Examiner rejects claims 1, 2, 4, 6-9, 12, 14 and 16-26. In response Applicant cancels all claims and adds new claims 27-44. Reconsideration and allowance of the pending claims in view of the amendments and the following remarks are respectfully requested.

A. Objection to the Specification.

The Examiner identifies a typographic error which Applicant now corrects. Please note that this change was submitted with the response to provoke advisory. However, because Applicant is unsure whether the correction was entered, the change is submitted again.

B. Rejection of Independent Claims under 35 U.S.C. §102(e)

The Examiner rejects independent claims 1, 16 and 25, and the claims dependent thereupon, under 35 U.S.C. 102(e) as being anticipated by the Gudjonsson Patent No. 6,564,261 (hereinafter the '261 patent). In response, Applicant has cancels all claims and adds new claims 27 - 44 to clarify the claimed methods and device of independent claims 27, 35 and 43 which correspond to the previous independent claims 1, 16 and 25. Reconsideration of the claims in light of the amendments is respectfully requested.

To anticipate a claim under 35 U.S.C. sections 102(a), (b), or (e), the reference must teach every element of the claim. (See MPEP 2131.) "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." (Emphasis added) (Verdegaal Bros. v. Union Oil Co. of California; see also MPEP 2131.) "The identical invention must be shown in as complete detail as is contained in the ... claim." (Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); see also MPEP 2131).

Further any claim depending from base claims not anticipated or made obvious by the prior art also are not anticipated or made obvious by the prior art since the dependent claims comprise all of the elements of the base claims.

The '261 patent does not teach each and every element of the independent pending claims 27, 35 and 43 as discussed below. Thus, Applicant respectfully requests that the Examiner issue a notice of allowance for all of the pending claims.

a. Independent claim 27, and dependent claims 28-34

Independent method claim 27 is not anticipated in view of the '261 patent since the '261 patent fails to teach or suggest each and every element of independent claim 27. Specifically, method claim 27 comprises, among other things,

"the SMS center sending the indication to a proxy server on the data network to establish presence information for the wireless communications device" and

"transmitting from the proxy server to the instant messaging service the presence information indicating that the wireless communications device is in the active message state, the proxy server maintaining the presence information for the wireless communications device until the wireless network sends an indication to the SMS center that the wireless communications device is in a non-active message state."

The '261 patent does not teach or suggest a proxy server that only maintains presence information when the wireless communications device is in an active message state as claimed in claim 27 by Applicant. Rather the '261 patent teaches that the proxy server is maintained as an agent 3 for a user 7. (See for example, the '261 patent Column 8, Lines 47-65. As claimed by Applicant in claim 27, once the wireless communications device in a non-active message state, the proxy server is no longer the equivalent of an agent for the wireless communication device. Thus, the '261 patent teaches away from Applicant's method. Applicant respectfully asserts that claim 27 is patentable over the '261 patent since the '261 patent does not teach every element of

claim 27 as required under 35 U.S.C. 102(e). Also, since dependent claims 28-34 are dependent upon a patentable base claim 27, Applicant respectfully requests that the Examiner issue a notice of allowance for claims 27-34.

b. Independent claim 35, and dependent claims 36-42

Independent system claim 35 is not anticipated in view of the '261 patent since the '261 patent fails to teach or suggest each and every element of independent claim 35. Specifically, claim 35 comprises, inter alia,

"the proxy server having a first connection to the SMS center and a second connection to a data network, the proxy server for logging into the instant messaging service upon receipt of the active message state, the proxy server providing a proxy presence for the wireless communications device when the wireless communications device is in the active message state."

In contrast to Applicant's claimed system where the proxy server only maintains presence when the wireless communications device is in an active message state, the proxy server of the '261 continuously remains an agent 3 for a user 7. That is, the agent 3 "reflects whether a given user is currently logged in the system or not, thus giving information whether that user 7 is immediately reachable." (Column 11, lines 45 - 57.) Because the '261 patent does not teach or suggest the use of a proxy server only when the wireless communications device is in the active message state as claimed by Applicant, the '261 patent does not anticipate independent claim 35 under 35 U.S.C. 102(e). Thus, Applicant respectfully requests that the Examiner issue a notice of allowance for claim 35, and dependent claims 36-42.

c. Independent claim 43, and dependent claim 44

Independent method claim 43 is not anticipated in view of the '261 patent since the '261 patent fails to teach or suggest each and every element of independent claim 43. Specifically, claim 43 comprises, inter alia,

"the SMS center communicating to a proxy server that the wireless communications devices is in the active message state status" and

"the proxy server establishing presence information with the instant messaging service upon receipt of the SMS center communication that the wireless communications device is in the active message state status."

Applicant claims an SMS center which transmits an active message state status to the proxy server. Upon receipt of the active message state status, the proxy server establishes presence information with the instant messaging service. In contrast, the proxy servers of the '261 patent would stay activated as an agent for the user. Thus, Applicant asserts that the '261 patent does not teach each and every element of claim 43 as required by 35 U.S.C. 102 (e), and Applicant respectfully requests that the Examiner issue a notice of allowance for independent claim 43 and dependent claim 44.

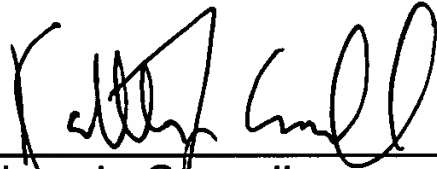
C. Conclusion

Applicant asserts that the pending claims are not anticipated under 35 U.S.C. 102(e) in view of the '261 patent as the '261 patent does not teach or suggest each and every element of the pending claims. Thus, Applicant respectfully requests that the Examiner issue a notice of allowance for all of the pending claims 27-44.

Should the Examiner believe that prosecution of this application might be expedited by further discussion of the issues, he is invited to telephone the attorney for Applicant at the telephone number listed below.

Respectfully submitted,

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